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more probable that the loss was chargeable to the carrier, than to his own agents; a case is presented in which I am not at liberty to make the carrier liable.

The decree will be entered in favor of the libellants for the freight unpaid, and the costs.

In the Supreme Court of Pennsylvania.

JACOB BORN ET AL. vs. LUCAS SHAW.

A sale of horses was made in the State of Virginia, within the jurisdiction of which both the parties and the property were at the time, but possession was retained by the vendor. The horses were subsequently sent into the State of Pennsylvania to be pastured, and there made the subject of an attachment by creditors of the vendor. It was *held* that the validity of the sale, and of the title of the vendee, was to be determined by the law of Virginia, so far as it differs from that of Pennsylvania on the subject of fraud in the sale of chattels.

Error to the Common Pleas of Green county.

LEWIS, C. J.—By the law of Pennsylvania a sale of personal property is not good, as against the creditors of the vendor, unless possession be delivered to the vendee in accordance with the sale.

Where possession is retained by the vendor, it is not only evidence of fraud, but fraud *per se*. There are some exceptional cases. Where, from the nature of the transaction, possession either could not be delivered at all, or, at least, without defeating fair and honest objects intended to be effected by, and constituting the motive for entering into the contract, the case might be regarded as an exception to the rule. Yet where possession has been withheld from the vendee pursuant to the terms of the argument, some good reason for the arrangement, beyond the convenience of the parties, should appear. *Clow et al. vs. Woods*, 5 S. & R., 273.

But this rule does not appear to prevail in Virginia. *Davis vs. Turner*, 4 Grattan, 422.

In that State the rule is, that retention of possession of personal property by the vendors, after an absolute sale, is *prima facie* fraudulent, but the presumption may be rebutted by proof.

In this case the parties to the sale, and the property which was

the subject of it, were within the jurisdiction of Virginia when the sale was made, but the property, consisting of horses and mules, was subsequently sent over the State line into Pennsylvania to be pastured, and the question is whether, on an attachment in Pennsylvania by a creditor of the vendor, the validity of the sale shall be tested by the law of Virginia, or by that of Pennsylvania?

If there had been previous sale by the owners at their place of domicil, and the contest was between the prior and subsequent purchasers, a very different question would be presented: so if the property had been situated within the jurisdiction of Pennsylvania at the time of the sale in Virginia, the *lex rei sitæ* might be applied for the purpose of protecting the rights of our own citizens.

But where the property and the parties to the sale were within the jurisdiction of another State, when the contract was made and executed according to the laws of that State, the right vested *eo instanti* in the purchaser, and no subsequent removal of the property into Pennsylvania, for a lawful purpose, can divest it.

The subsequent removal of the horses and mules, for the purpose of pasturing them in Pennsylvania, was no violation of our policy, nor of the rights of our citizens. They had no claims upon it under our laws when the sale was made, because it was not in any respect subject to our jurisdiction.

Their claims upon it were under the laws of Virginia, and the court fell into error in holding that the validity of the sale was to be tested by the law of Pennsylvania. *Henret vs. Jackson*, 7 Martin, 318; *Scott vs. Duffy*, 2 Harris, 18; *Shelby vs. Guy*, 11 Wheaton, 361.

By the common law, a debtor has a right to prefer one class of creditors to another, and we think it was error to encourage the jury to take into consideration the exercise of this right as "a circumstance in deciding upon the fairness of the transfer."

The other errors are not sustained.

Judgment reversed, and *venire facias de novo* awarded.